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09/889,773	07/20/2001	Luigi Pellegrino	5014US	1161

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Traskbritt
PO Box 2550
Salt Lake City, UT 84110

EXAMINER

TRAN, HIEN THI

ART UNIT	PAPER NUMBER
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1764

DATE MAILED: 10/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/889,773

Applicant(s)

PELLEGRINO, LUIGI

Examiner

Hien Tran

Art Unit

1764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

DETAILED ACTION

Priority

1. Receipt is acknowledged of papers (TO99A000045) submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Oath/Declaration

2. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It does not identify the foreign application for patent or inventor's certificate on which priority is claimed pursuant to 37 CFR 1.55, and any foreign application having a filing date before that of the application on which priority is claimed, by specifying the application number, country, day, month and year of its filing.

Drawings

3. The drawings have not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the drawings to comply with CFR 1.84(p)(5), e.g. they should include the reference sign(s) mentioned in the specification and vice versa.

Specification

4. The disclosure is objected to because of the following informalities:

On page 5, line 26 "16a" should be changed to --16b-- (note line 22).

On page 15, line 28 "52" should be changed to --52'-- (note Fig. 6).

Appropriate correction is required.

5. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Claim Objections

6. Claims 1, 6-7, 10-11, 18, 20-21 are objected to because of the following informalities:

In claim 1, line 5 "comprising" should be deleted.

In claim 6, line 1 "any one of" should be deleted. See claims 7, 10, 11, 18, 20-21 likewise.

In claim 18, line 2 "18b")" should be changed to --(18b)--.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-5, 13-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Myddelton (3,016,108).

With respect to claims 1, Myddelton discloses an apparatus for reducing atmospheric pollution by exhaust gas, comprising: a casing 1 having an inlet 2 for the unpurified exhaust gas; an outlet 5 for the purified exhaust gas; scrubbing means 13, 14 housed in said casing 1, interposed between said inlet 2 and said outlet 5, and defining an inner chamber and, together

Art Unit: 1764

with said casing 1, an outer chamber surrounding said scrubbing means; a first connecting means 3 for connecting said outer chamber to said inlet 2; and a second connecting means 7 for connecting said inner chamber to said outlet 5, wherein said outer chamber has an annular section decreasing in the flow direction of the exhaust gas (Fig. 1).

With respect to claims 2-5, 14-17, Myddelton discloses that the first connecting means 3 comprises an annular section first inlet conduit having at least a first portion, said first portion having the transverse dimensions increasing towards said outer chamber and a substantially constant exhaust gas passage section which is substantially equal to the passage section defined by the inlet 2 (Fig. 1).

With respect to claim 13, the portion before the plug 15 is considered an expansion chamber.

Instant claims 1-5, 13-17 structurally read on the apparatus of Myddelton.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

Art Unit: 1764

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. The art area applicable to the instant invention is that of a device for reducing atmospheric pollution by exhaust gas.

One of ordinary skill in this art is considered to have at least a B.S. degree, with additional education in the field and at least 5 years practical experience working in the art; is aware of the state of the art as shown by the references of record, to include those cited by applicants and the examiner (*ESSO Research & Engineering V Kahn & Co*, 183 USPQ 582 1974) and who is presumed to know something about the art apart from what references alone teach (*In re Bode*, 193 USPQ 12, (16) CCPA 1977); and who is motivated by economics to depart from the prior art to reduce costs consistent with the desired product characteristics. *In re Clinton* 188 USPQ 365, 367 (CCPA 1976) and *In re Thompson* 192 USPQ 275, 277 (CCPA 1976).

12. Claims 6-12, 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over by Myddelton (3,016,108) in view of Boyd et al (1,848,990).

The apparatus of Myddelton is substantially the same as that of the instant claims, but fails to disclose the specific shape of the wall defining the first portion of the first inlet conduit.

However, the shape of the walls is not considered to confer patentability to the claim. It would have been an obvious matter of design choice to select an appropriate shape for the walls, since such a modification would have involved a mere change in the shape of a component. A change in shape is generally recognized as being within the level of ordinary skill in the art,

absence showing any unexpected results. *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966).

In any event, Boyd et al discloses provision of cone shaped walls defining the inlet conduit. It would have been obvious to one having ordinary skill in the art to select an appropriate shape for the walls, such as the cone-shaped walls as taught by Boyd et al in the apparatus of Myddelton, on the basis of its suitability for the intended use as a matter of obvious design choice, absence showing any unexpected results thereof.

With respect to the size of the portions, it should be noted that where the only difference between the prior art and the claims is a recitation of relative dimensions of the claimed device, and the device having the claimed dimensions would not perform differently than the prior art device, the claimed device is not patentably distinct from the prior art device. It would have been an obvious matter of design choice to select an appropriate size for portions as claimed in the instant claim, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art.

Note that the axis of the inlet and the axis of the casing in Myddelton are substantially parallel.

13. Claims 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Myddelton (3,016,108) in view of Boyd et al (1,848,990) as applied to claim 19 above, and further in view of Mizrah et al (4,732,594).

Mizrah et al discloses provision of different locations of the inlet with respect to the axis of the casing.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to select any appropriate location for the inlet in the modified apparatus of Myddelton, such as the one taught by Mizrah et al or skewed one, since such a modification would have involved a mere change in the arrangement of the parts and it has been held that rearranging parts of an invention involves only routine skill in the art. In *re Japikse*, 86 USPQ 70.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

EP 20766, EP 340784, DE 3,803,917, EP 511415 are cited for showing state of the art.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hien Tran whose telephone number is (571) 272-1454. The examiner can normally be reached on Tuesday-Friday from 7:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Caldarola can be reached on (571) 272-1444. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Application/Control Number: 09/889,773
Art Unit: 1764

Page 8

HT
September 29, 2004

Hien Tran
Hien Tran
Primary Examiner
Art Unit 1764